



Jennifer R. Asbrock

Member

502.779.8630 (t)

502.581.1087 (f)

jasbrock@fbtlaw.com

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Lyle W. Cayce, Clerk
U.S. Court of Appeals
for the Fifth Circuit
600 S. Maestri Place
New Orleans, LA 70130-3408

RE: *Convergys Corp. v. NLRB*, Case No. 15-60860

Dear Mr. Cayce:

Pursuant to Fed R. App. P. 28(j), we bring the Court's attention to two recent decisions relevant to Convergys' position in the above-referenced lawsuit. These cases support Convergys' argument that a class or collective waiver does not violate Section 8(a)(1) of the National Labor Relations Act (the "Act"), consistent with the Fifth Circuit's decision in *D.R. Horton, Inc. v. NLRB*, 737 F.3d 344 (5th Cir. 2013), *denying enforcement in relevant part of 357 NLRB 2277* (2012), *petition for reh'g en banc denied*, 5th Cir. No. 12-60031 (April 16, 2014). See Convergys Brief at 8-13.

In *Citigroup Tech., Inc. v. Nat'l Labor Relations Bd.*, 5th Cir. No. 15-60856, 2016 WL 7174107, at *1 (Dec. 8, 2016), the Fifth Circuit Court of Appeals granted Citigroup Tech., Inc.'s petition for review of the National Labor Relation Board's Decision and Order which found that Citigroup Tech., Inc. violated Section 8(a)(1) of the Act by maintaining an Employment Arbitration Policy, which requires employees, as a condition of employment, to agree to resolve certain employment-related disputes exclusively through individual arbitration. *Citigroup Tech., Inc. & Citicorp Banking Corp. (Parent), A Subsidiary of Citigroup, Inc. & Andrea Smith*, 363 NLRB No. 55 (Dec. 1, 2015). Following the Fifth Circuit's rule of orderliness, the Court granted Citigroup Tech., Inc.'s petition for review and denied the National Labor Relations Board's cross-application for enforcement of its order, as there has been no intervening change in the law since its decisions in *D.R. Horton, Inc. v. NLRB*, and *Murphy Oil USA, Inc. v. NLRB*, 808 F.3d 1013 (5th Cir. 2015), *denying enforcement in relevant part of 361 NLRB No. 72*, 2014 WL 5465454 (Oct. 28, 2014), *petition for reh'g en banc denied*, 5th Cir. No. 14-60800 (May 13, 2016). *Citigroup Tech.*, at *1.

Similarly, in *Jack in the Box, Inc. v. NLRB*, 5th Cir. 16-60386, the Fifth Circuit Court of Appeals granted Jack in the Box, Inc.'s petition for review of the National Labor Relation Board's Decision and Order which found, in relevant part, that Jack in the Box, Inc. "violated Section 8(a)(1) of the Act by maintaining a Dispute Resolution Agreement (Arbitration Agreement) that requires employees, as a

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condition of employment, to waive their rights to pursue class or collective actions involving employment-related claims in all forums, whether arbitral or judicial.” *Jack in the Box, Inc. & Dana Ocampo*, 364 NLRB No. 12 (May 24, 2016). The Court granted Jack in the Box, Inc.’s petition for review, reversed the National Labor Relation Board’s decision adverse to Jack in the Box, Inc. and denied the National Labor Relations Board’s cross-application for enforcement of its order. *Jack in the Box*, at *1 (referencing Jack in the Box, Inc.’s argument that the Court found that class and collective action waivers are permissible under the National Labor Relations Act in *D.R. Horton, Inc. v. NLRB*, 737 F.3d 344 (5th Cir. 2013); *Murphy Oil USA v. NLRB*, 808 F.3d 1013 (5th Cir. 2015); and *Chesapeake Energy Corp. v. NLRB*, No. 15-60326, 2016 WL 573705, at 2 (5th Cir. February 12, 2016)).

Respectfully submitted,

/s/ Jennifer R. Asbrock

Jennifer R. Asbrock

CC: All counsel through CM/ECF
Enclosure

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